

MIDTOWN NORTH MAIN STREET IMPROVEMENTS PROJECT AGREEMENT**DRAFT****CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND**

THIS AGREEMENT for consulting services regarding the Midtown North Main Street Improvements ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and Brian Kangas Foulk Engineers ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2005 (the "Effective Date") in Milpitas, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____, 200__, and Consultant shall complete the work described in Exhibit A - Part 1, (Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A - Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

1.2 Standard of Performance. The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represent themselves as an experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare (a) bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce a 100% Construction Documents ready for bid within the schedule, and prior to bidding. The Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 5% of the total construction bid price. City shall notify the Consultant upon receiving information or entering into dialogue that may result in a construction change order. The City and Consultant shall actively participate and agree to any resolution resulting in a construction change order. Should the Consultant not be notified of a potential construction change order as specified herein, any such resulting change order may not be used to evaluate the Consultant's Standard of Performance based on construction change orders.

1.3 Assignment of Personnel. Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ

or is otherwise physically unable to perform the job duties. The new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from City of such desire of City, reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

1.4 Time.

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A.

Section 2. COMPENSATION.

City hereby agrees to pay Consultant a lump sum amount of seven hundred seventy three thousand, three hundred seventy one Dollars (\$773,371), for all work set forth in Exhibit A, Part 1; plus all Reimbursable Expenses incurred in performing the work, as described in Exhibit B, not to exceed twenty eight thousand (\$28,000); plus Additional Services, if any, not to exceed one hundred twenty five thousand Dollars (\$125,000). Total Compensation shall not exceed eight hundred ninety eight thousand, three hundred seventy one Dollars (\$898,371). City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

2.1 Completion On Schedule.

Consultant and City agree that the Consultant has developed both the time schedule and the fee schedule for each phase of work described in Exhibit A. Therefore, the Consultant shall complete each phase on schedule and City shall pay the full lump sum for each phase, which is divided into a 95% Fee for completion and a 5% Fee for early or on-time completion. On-time completion is completion by the scheduled date for that phase. The Consultant shall not be held responsible for schedule delays resulting from regulatory agencies or other outside parties beyond the Consultant's control. If the Consultant completes work ahead of schedule this will provide float in the schedule as a Consultant resource, but will not change the scheduled dates of subsequent tasks. If the Consultant completes a phase after the scheduled date it does not change the scheduled dates for subsequent tasks except as provided for herein.

If any phase is completed late Consultant forfeits the 5% Fee amount. The Consultant is expected to add resources and take whatever measures are necessary to accelerate the work to meet the next phase's scheduled date. If the Consultant recovers the schedule by completing the next or subsequent tasks by their scheduled dates, any otherwise previously forfeited 5% Fee amounts will be paid to Consultant.

If any phase is not completed within one week after the scheduled date, the City may subtract the amount of seven thousand dollars (\$7,000.) per week, from the 95% Fee as liquidated damages for each week that completion of the phase exceeds the scheduled date. Each week paid, as liquidated damages, will add a week to the remaining phase's scheduled dates.

2.2 **Invoices**

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:

- Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A tabulation of Reimbursable Expenses for the billing period;
- Total invoice amount, total billed to date, and remaining amounts, for each phase.
- Certification of the lack of compensation on the Project other than compensation from the City;
- False Claims Act certification in the form set forth in Exhibit J;
- The Consultant's signature.

2.3 **Monthly Payment**

City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

2.3.1 **Retention**

City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the bidding phase after the Project is approved for bidding by the City Council. If the project is not approved for bid within 60 days of Consultant's submission of bid documents to the City, and if the bid documents are found to be reasonably acceptable by the City, City will release full retention.

2.3.2 **Additional Withholding**

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

2.4 **Total Payment.**

City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.9 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 **Additional Services.**

A contingency amount of one hundred twenty five thousand dollars (\$125,000) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through

the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose All-Urban Consumers Price Index.

- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed twenty eight thousand dollars (\$28,000). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded *without written authorization of the City and an appropriate increase in the Reimbursable Expense Budget.* Travel, food, and accommodations are not reimbursable expenses.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all accrued retention to-date and the current month's payment as liquidated damages for the loss to the City to administer the completion of the work by others.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is *beyond the scope of work of the present contract phase.* Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. *Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.*

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-

insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 [check form #s] (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

4.3.1 **General requirements.** Consultant, within the fee described in Exhibit B shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$300,000 per claim. City may provide Owner Controlled Insurance or a wrap-around insurance policy. If City does not provide insurance, Consultant shall increase insurance limits up to five million dollars (\$5,000,000.) annual aggregate and City shall pay cost of additional premium to increase such insurance, as a separate cost amendment, to increase such insurance.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- The retroactive date of the policy must be shown and must be before the date of the Agreement.
- Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

4.4 **All Policies Requirements.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.
- 4.4.3 **Notice of Reduction in or Cancellation of Coverage.** An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.
- 4.4.4 **Additional insured; primary insurance.** Except for the professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 4.4.5 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

- 4.4.6 **Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.
- 4.4.7 **Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.
- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
 - Terminate this Agreement, for cause.

SECTION 5 INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of

personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:
- 8.6.1 Terminating the Agreement;
 - 8.6.2 Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;
 - 8.6.3 Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
 - 8.6.4 Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.3 **Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval

authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.

- 10.9 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.10 **Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.
- 10.11 **Contract Administration.** This Agreement shall be administered by the Assistant City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Assistant City Engineer or designee.
- 10.12 **Notices.** Any written notice to Consultant shall be sent to:
- Consultant Name
Address
Attention:

Any written notice to City shall be sent to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Greg Armendariz

with Copy to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Mark Rogge

- 10.13 **Professional Seal.** In accordance with licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.
- 10.14 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations,

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representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

10.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule, Hourly Rates
Exhibit C	Personnel, The Professional Team
Exhibit D	Cost Plan, Construction Budget, Target for final Estimate of Probable Construction Costs
Exhibit E	Certificate of Insurance, Certificate of Workers Compensation Insurance
Exhibit G	Invoice or Claim Declaration
Exhibit H	City Support
Exhibit I	Completeness & Quality Considerations

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The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

Charles R. Lawson, Acting City Manager

Principal/President

MILPITAS REDEVELOPMENT AGENCY

Charles R. Lawson, Acting Executive Director

_____, Principal/Secretary,
Chair Board of Directors

Attest:

Gail Blalock, City Clerk/Agency Secretary

Approved as to Form:

Steven T. Mattas, City Attorney/Agency Counsel

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Scope of Work Midtown North Main Street Improvements North Main Street, Weller Lane, Carlo Street, Winsor Street and related Driveways

The project consists of public street, driveway and streetscape improvements to existing North Main Street from Weller Lane to Carlo Street, Winsor Street, from Carlo to the northern terminus; and Weller Lane east of Abel, and driveways to the new Midtown Parking Garages. (Approximately 2750 LF of roadway). The streetscape improvements will include all amenities to create a pedestrian-oriented street that support the Midtown streetscape guidelines and the Midtown Specific Plan and the draft plan lines for the area. The project includes each intersection at all warranted signalized improvements.

The streetscape improvements shall be designed to support existing and new developments. Existing developments include several commercial and retail establishments. New developments include: a 60,000 square-foot library; a 103-unit senior housing project; a 60,000 square foot County Valley Health Center; a 240 to 300-space east parking garage; and a 275 to 400-space west parking garage, with first floor retail.

Midtown Specific Plan improvements for this project shall include the design and installation of: new landscaped median islands, landscape features and plantings along the roadways, and irrigation systems; determination of appropriate locations for interpretive pieces; new decorative street lighting and secondary electric system for holiday lighting and irrigation controllers; decorative hardscape and street furniture; roadway markings and signage; warrant studies and design of new signalized intersection improvements at the North Main Street and Weller Lane intersection, North Main Street and State Route 237 Off-ramp, North Main Street and Carlo if warranted at any of these locations, and Abel Street and Weller Lane; emergency vehicle access onto the 237 off-ramp; demolition plan of existing facilities; design of pavement sections, including recommendation of a TI, R-values and related measures; traffic calming & street aesthetic provisions, including, but not limited to, pedestrian crossing tables, smart crosswalks, and integral pavement markings; coordination of new utilities; electrical power for CITY events and activities; setting new lines and grades to conform to existing and new buildings and parking facilities; stormwater pollution prevention including bio-swales, best management practices, and other means to limit storm-water impacts; temporary detours, access, signage and utilities plans, including plans for the installation of temporary variable message signs on the State Route 237 off-ramp for stage construction; and other customary or necessary provisions.

Several special quality measures will be implemented as part of this design, which may include the following:

- Integration of new above ground cabinets (signal controls or telecom) into new building structures;
- Interpretive kiosks that provide street signage, way-finding, and historic information;
- Hydraulic design of main street to act both as a bio-swale for normal stormwater and conveyance for flood water;
- Pedestrian crossing tables and/or smart crosswalks;
- Wireless network access devices;

- Coordination with Library Project design team;
- Coordination with Parking Garages design teams;
- Switched power receptacles at each tree for holiday or seasonal lighting;
- Event power suitable for parades, and other civic events;

Further description of design work includes:

- Compliance with all laws, codes, and regulations;
- Compliance with applicable mitigations and mitigation monitoring called for in the North Main Street Development EIR;
- Design of all storm drainage laterals, storm inlets, bio-swales and other storm water collection devices, other than storm drainage mains indicated on the current Utilities plans;
- Design of modifications to all sanitary sewer laterals, clean-outs, terminations, and adjustment to fit streetscape design, as indicated in the current Utilities plan;
- Design of modifications to all water laterals, valves, backflow preventors and decorative cages or enclosures, water meter boxes, fire post indicator valves, and related water utilities, shown on the current utilities plan;
- Design and/or coordination of all other underground utilities, including but not limited to, power, electrical signal, natural gas, telecommunications, fiber or other existing or planned utilities or sleeves for future use, along with suitable terminations, either at grade or above ground;
- Details for all access ports (manholes), vaults, boxes and other utilities appurtenances. Locations may need adjustment to provide continuous curb lines, pedestrian crossings or other features;
- Design and details for accessibility, including provisions for people with physical handicaps, sight impairment or hearing impairment. These features may include, but are not necessarily limited to, awareness strips changed pavement textures, audible signals, and other means to improve accessibility and safety for people with varying ranges of abilities;
- Integrated lighting design and landscaping that provides appropriate lighting levels after trees have matured;
- Detailed layouts of utility boxes nested along sidewalks and integrated with scoring patterns;
- Detailed scoring patterns for sidewalks and other paved areas where suitable;
- Integrated signage design that relates to all features in the most effective and aesthetic manner;
- Excellent coordination of all disciplines of work for a truly integral and elegant design;
- Coordination with Valley Transportation Agency and CITY for Bus Stop location design, shelters and details;
- Coordination of Portals at garage entries for precise placement, foundations, power and signal lines;
- Street vacation and easement instruments for portions of Weller Lane and Winsor Avenue;
- Complete plan/profile for Main Street within the right of way, and with contours beyond;

- Preparing the design plans to allow for phasing the proposed construction work into two parts, either performed by one contractor under a single contract, or with the option of bidding out the two phases as separate projects;
- Coordinate with Caltrans for the 237 off ramp, or 237-slope easement access, including the emergency vehicle exit from the proposed Health Center, entrance to the West Parking Garage, and intersection improvements at the 237 off ramp and Main Street.

Information and Resources available:

All of the available resources are considered "Record Data." The CITY does not guarantee or warrant any Record Data. The information may be incomplete or incorrect. All CONSULTANTS must verify any Record Data, they wish to use, in the field to their professional satisfaction. The CITY will not accept any disclaimers on plans or specifications that limit the veracity of the design or the plans or specifications due to reliance on Record Data.

- North Main Street Plan Line (Draft)
- Main Street Concrete Slab Study, by Nolte
- Utility Relocation Project Plans, by Harris
- North Main Street Development Environmental Impact Report and Mitigation Monitoring Plan
- Main Street Streetscape Guidelines, by Nolte
- Library Conceptual Design Report (Includes Library and East Midtown Garage)
- Preliminary site layout for North Main Street (includes preliminary site plans for the Library and Midtown East Parking Garage, the County Valley Medical Center, Mid-Peninsula Housing Coalition Senior Housing, and Midtown West Parking Garage, and Apton Plaza (private development to the north)
- CITY Aerial GIS maps
- Boundary and Topo Survey, by Harris
- Record of Survey, by Cross Land Surveying
- ALTA Survey, by JMH Weiss

1) **TASK 1: PRELIMINARY DETERMINATIONS**

The preliminary determination task of the project is a vital project phase which will set the course of the overall project and the adjoining development projects. Given that there are many projects being initiated which front the proposed roadway improvements, it is important that these adjoining projects be given an accurate map to follow. This map will be the guide that each project can use as a reference to ensure project compatibility. The map will consist of a master roadway grading plan which will identify curb locations, street profile and cross sections and a utility master plan which delineate existing and proposed utility mains and services. By providing these master plans, the focus on coordination will be implementation rather than development.

In the development of the utility master plan, it is assumed that the Utility Relocation Project Plans developed by Harris will be finalized as either completed bid documents for simultaneous construction or as-built plans at construction completion. The CONSULTANT will check the Harris Utility Relocation Project Plans for conformance to

the Midtown North Main Street Improvement Project. These plans will be implemented into the utility master plan. The utility master plan will also be supplemented by field visits, additional topographic survey as authorized under Task 11, and selective potholing. The utility master plan will be limited by reasonably unattainable information such as but not exclusive to service lateral profiles, changes in vertical alignment of pressure pipes and undocumented utilities.

The project area lies adjacent to Ford Creek. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) shows the area in Flood Hazard Zone A. The Area is designated A0 (depth 1 foot). The Master Plan indicates that this area is designated Zone AO because of deficiencies of Ford Creek. The CONSULTANT will perform a flood plain analysis for the roadway design. The input information for the analysis will be based on the existing Schaaf and Wheeler hydraulic report. The analysis will also include a hydraulic review of the street profiles and the master grading plan. It is assumed that the flood plain analysis will not call for hydraulic modifications outside of the project's roadway limits.

- Collect and review available data, as-builts, and reports
- Perform field site visits
- Develop preliminary curb alignment
- Delineate preliminary crosswalk grades and geometry
- Conduct a street flood plain analysis
- Develop master grading plan
- Obtain potholing information on selective utilities (assumes 12 potholes)
- Develop a utility master plan

2) TASK 2A: INTERSECTION DESIGN & COORDINATION

The CONSULTANT will perform the required warrant studies at the intersections of North Main Street/State Route 237 and North Main Street/Carlo Street. To conduct the warrant studies, the CONSULTANT assumes that information presented in the traffic report supporting the current Environmental Document will be used for the warrant studies. The CONSULTANT will not count existing traffic or forecast traffic volumes. The CONSULTANT will work with the CITY traffic engineer to prescribe a reasonable methodology to develop forecasted pedestrian counts. The CITY will provide the accident data at each of the above intersections. The CONSULTANT shall design three new traffic signals including the removal of one of the three traffic signal systems.

The traffic signal designs scoped in this task provide for a 30% construction design level. Advancement of these drawings is provided in the later tasks. The CONSULTANT will provide traffic signal drawings, which delineate specific locations for installation and construction. For the purposes of designing traffic signal foundation, mounting details and bolt spacing, Caltrans standard details may be used in lieu of copying the detail and having it verified by a structural engineer.

The integration of above ground cabinet structures into adjacent structures is to mean that cabinets may be screened by hardscape or integrated into the proposed gateway features which will be designed by the Library Architect. The CONSULTANT will investigate and if permitted will provide for the construction of the traffic signal controller

within the proposed Library. This effort will require coordination with the Library Architect for the CONSULTANT to provide service and cabinet foundations but will not require structural engineering design by the CONSULTANT design team.

Coordination efforts for this task have been included in Task 6 efforts and are limited to any restrictions stated in Task 6.

For this task the only permit required will be a Caltrans encroachment permit for the new traffic signal at North Main Street/State Route 237. The CONSULTANT anticipates that the traffic signal will be CITY maintained in order to facilitate review and approval. The CITY will coordinate with Caltrans to initiate or modify the Maintenance Agreement between the CITY and Caltrans.

- Obtain and review existing traffic reports
- Conduct warrant analysis at the intersection of Main Street / State Route 237
- Conduct warrant analysis at the intersection of Main Street / Carlo Street
- Prepare 30% traffic signal modification design for Main Street / Weller Lane
- Prepare timing plans for Main Street / Weller Lane traffic signal
- Prepare 30% traffic signal design for Main Street / State Route 237
- Prepare timing plans for Main Street / State Route 237 traffic signal
- Prepare 30% traffic signal design for Main Street / Carlo Street
- Prepare timing plans for Main Street / Carlo Street traffic signal
- Provide Caltrans coordination for approval of Main Street / State Route 237 traffic signal
- Coordinate possibility of integrating above ground traffic cabinets into adjacent structures (proposed by others)
- Develop pedestrian crossing tables for pedestrian crossings
- Prepare 2 design concepts for pedestrian crossing with raised crosswalks, lighted warning signs, bollards & flush curbs
- Prepare 2 design concepts for pedestrian crossing with raised crosswalks, lighted warning signs, bulb outs at intersections to shorten lengths of crosswalks, bollards & flush curbs (show plan and profiles at 20' scale)

2) TASK 2B: CONCEPTUAL DESIGN (30% Construction Drawings)

The Main Street Concrete Slab Study is currently being updated with data to better define the limits of the existing concrete slab along North Main Street. The existing concrete slabs will be removed under a separate contract. This project excludes all work involved in considering existing concrete slabs in Main Street.

To characterize the subsurface conditions, the geotechnical subsurface investigation will drill, log and sample seven exploratory borings to a depth of about 10 feet. The borings will identify existing pavement types/thickness and soil samples for visual classification and lab testing. Although the project site is within a state zoned area of having potential liquefaction, a liquefaction evaluation is not included as part of this investigation. In conjunction with notifications to Underground Service Alert and to reduce the risk of damaging unidentified underground utilities, which is the responsibility of the owner to mark their utilities prior to drilling, a private utility locator has been included in this work. Traffic control is also included in this task during the field investigation and coring. Soil

cuttings generated from the borings are assumed not to require special containment, testing, and disposal and will be spread out under the shrubs along the roadway. The results of the testing and recommendations will be presented in a geotechnical report in Task 3.

During Task 2B, the CONSULTANT will prepare schematic landscape and streetscape concepts, including decorative hardscape, site furnishings, landscape palette for the entire length of the project, interpretative kiosk concepts, gateway features, and pedestrian access features. Consultant will draw upon design concept elements presented in the Midtown Specific Plan and adjacent Abel Street Improvements project in order to maintain corridor aesthetic cohesion for the downtown area. In conjunction with CITY staff's input and concurrence, these conceptual landscape and streetscape concepts will be developed to provide an appropriate identity specific to the Midtown North Main Street Improvements project. The limits of the conceptual plans will include landscaping around the proposed garages and the Library with the exclusion of the front plaza.

The requirement for a 5-year extended landscape establishment period will be incorporated into the project specifications in the latter stages of the design development process.

- Coordinate with utility and other appropriate agencies to determine the locations and design for power service points for street, holiday, and event lighting as well as irrigation controllers.
- Perform geotechnical field work
- Prepare title sheet
- Set project base sheets at 1"=20' scale
- Develop conceptual alignment for the project
- Prepare profiles and cross sections
- Develop conceptual layout design with general roadway features
- Develop conceptual layout design with general roadway features
- Prepare striping plan
- Develop preliminary landscaping planting plans with palette including locations for public art
- Prepare preliminary irrigation plans with reclaimed water consideration
- Prepare outline of the title of the specifications section
- Develop preliminary cost estimates
- Perform in-house quality control review
- Gates services - Provide a detailed O&M Manual for the landscaping and irrigation systems

DELIVERABLE: Full size conceptual design drawings of entire length showing existing conditions and proposed conceptual design with cover sheet and concepts including outline specifications. Prepare a spreadsheet cost estimate with a breakdown by facility and discipline. Submission of 30% construction drawings will include electronic submissions.

3) TASK 3: DESIGN (65% Construction Drawings)

Designs developed in Task 2B will be refined and further developed to a 65% design level.

The roadway design will implement Best Management Practices (BMP). Preliminary stage construction plans will be developed and will include temporary changeable message signs along the Route 237 off-ramp. To complement the stage construction, storm water pollution prevention plans will be prepared.

A horizontal Plan Line will be prepared based on the CITY provided control for the existing boundary survey and the proposed alignment.

The geotechnical design services, based on the subsurface investigations completed in Task 2B, will focus on meeting the CITY's requirements of cost-effective designs that add value to the project. The geotechnical report will present a summary of the surface and subsurface conditions, geologic hazards and seismicity, and earthwork, foundation and pavement recommendations. The pavement section calculations will be based on testing results and a CITY approved TI value. The TI will not be developed based on field observations, but be based on compatible roadway usage. The initial findings will be presented in a draft geotechnical report during this phase and later be finalized in Task 4 by incorporating comments and issuing a signed/stamped copy of the report.

Considering the landscape and streetscape concepts that were conceptualized in the previous task, the CONSULTANT will refine these concepts for project implementation during this task. Hardscape, streetscape, landscape, and irrigation plans and details will be developed to incorporate the various aesthetic features to bring identity and continuity to the Midtown North Main Street Improvements Project.

Using the project landscape and streetscape concepts as a platform, the lighting system will include decorative street lighting which will be coordinated with the civil and landscape improvements proposed during the previous design phases. The lighting fixtures will be selected jointly with the landscape architect and CITY staff. The lighting levels will be in accordance with the recommendations established by the Illuminating Engineering Society, with consideration of providing appropriate lighting level after the trees have matured. The power systems will include electrical service to lighting, traffic signal controllers, irrigation controllers, and secondary electric systems for holiday lighting, event power, and interpretive kiosks. Event power suitable for parades and other civic events will also be provided. Event power will be provided via underground pull boxes. Furthermore, service and power panels will be integrated with other above ground cabinets into project or gateway improvements.

The design of the wireless network access devices will be introduced during this task. All necessary cabling, antennae, and active components for a functional system within the project limits will be developed into the conceptual design. The CONSULTANT shall integrate the wireless network access devices into project or gateway improvements. Provisions will be made to provide for the extension of the wireless network in the future into adjacent garages or building in the vicinity.

All components of the design plans, specifications and estimate will be included during the 65% phase. All project sheets, which will be represented in the bid documents, will be identified and developed in varying degrees of detail during this phase. Having a

complete set of plan sheets facilitates the preparation of construction details, technical specifications and engineer's cost estimates. Requirements arising through the 65% design phase will be incorporated into the plans, specifications and supporting documents. The technical specifications will carefully be reviewed to ensure that all jurisdictional requirements, utility coordination work and stage construction restrictions have been incorporated. The technical specifications will also include a list of submittals required by the construction contractor.

The CONSULTANT's quality control review for the 65% submittal will include the review of the design package for compliance with jurisdictional standards and completeness. The review will focus on ensuring that the plan elements are clearly delineated.

- Prepare a plan line
- Lowney services - Submit a draft geotechnical report
- Alliance services - Prepare lighting calculations
- Confirm drainage design through a hydraulic analysis
- Prepare Demolition Plans
- Update layout sheets and profiles
- Prepare construction details
- Prepare underground plans- Utility/drainage
- Develop BMP measures to implement in plans
- Establish staging requirement and plans
- Prepare storm water pollution plans
- Develop signing and striping plan
- Advance traffic signal plans (2 signals)
- Refine the landscaping and irrigation plans
- Develop lighting plans
- Prepare project special provisions and project specifications using CITY's front-end boilerplate.
- Develop quantities and construction estimate
- Perform in-house quality control review

DELIVERABLE: Full set of 1"=20' scale construction plans with details and coordinated discipline design sheets including specifications stamped 65% design, specifications at 65%, Plan Lines and documentation of horizontal control, draft Geotechnical Report, and preliminary pavement design calculations. Submission of 65% construction drawings will include electronic submissions.

4) TASK 4: PRE-FINAL DESIGN (95% Construction Drawings)

The intent of the 95% construction drawings is to incorporate comments, complete the design development phase, and resolve remaining project issues. All the plans, cross sections, specifications and estimate will be brought to completion. Details will be refined and completed. The CONSULTANT will focus on resolving and incorporating all design comments resulting from the 65% submittal.

A major task associated with this resolution is balancing the requirements and sorting out the needs of the stakeholders. At this point, the construction schedules of the

adjoining developments and CITY projects will be evaluated to assess and compare to the Midtown North Main Street Improvement Project. Phasing of the roadway may be implemented and construction constraints established to preserve the proposed improvements along Main Street. All gaps in the design caused by late-coming changes or pending design and policy decisions will be specifically targeted on the 95% design documents for immediate resolution.

The CONSULTANT shall substantiate the drainage design developed in the previous task by performing a hydraulic analysis to confirm the adequacy and capacity of the proposed drainage system.

The geotechnical report will be finalized and recommendations for pavement section, earthwork compaction and bedding material will be clearly defined.

Construction details for the project elements will be completed as part of this phase of the design process. During the 95% design phase, the CONSULTANTS will closely monitor the progress of critical activities, which have their own separate and defined timeline. These activities will be integrated into the overall design process.

Prior to completion of the 95% construction drawings, the CONSULTANT will conduct additional field visits. It is crucial that the design engineers are confident that existing conditions are depicted accurately in the bid-ready documents. The design team members are encouraged to perform field visits to verify uncertain features and to clarify survey data. Assumptions, in lieu of verifications, are not acceptable.

At 95%, a complete, checked and bid-ready set of documents will be available. Due to the coordination efforts, the review time during this phase will be minimized. Prior to delivering the 95% submittal, the CONSULTANT will complete its own in-house quality control review of all outgoing documents. Cost estimates and schedules will be updated and compared to the available budget.

- Finalize the geotechnical report
- Finalize title sheet and typical sections cross sections
- Finalize demolition plans
- Finalize layouts sheets and profiles
- Finalize underground plans- Utility/drainage
- Finalize construction details
- Prepare intersection and grading details
- Finalize staging requirement and plans
- Finalize signing, striping and staging plans
- Finalize traffic Signal plans (2 signals)
- Finalize landscaping and irrigation plans
- Finalize lighting plans
- Finalize project specifications
- Quantities and construction estimate
- Perform in-house quality control review

DELIVERABLE: Full set of 95% construction Plan drawings at 1"=20' with 95% engineers cost estimate, including required details and construction Specifications, final

Geotechnical report, and hardscape design calculations. Submission of 95% construction drawings will include electronic submissions.

5) TASK 5A: FINAL DESIGN (100% Construction Drawings)

Upon receiving final review comments, the CONSULTANT will incorporate or resolve all remaining comments received as a result of the 95% submittal. The CONSULTANT will confirm that all comments are incorporated. All aspects of the design will be finalized in order to prepare a complete set of final and constructible bid documents for advertisement. It is not anticipated that any further design development will occur during this task. The schedule and the cost estimate will be updated and formatted to its final form. The CONSULTANT understands that construction funding for the project is limited and may therefore require elements of the project to be removed or delineated as Add Alternates. The 100% construction drawings will be revised to reflect Add Alternate bidding if required. It is recognized that the Harris Utility Relocation Project Plans may be added to the Midtown North Main Street Improvement Plans. The Harris plans will be added as separate sheets and the Midtown North Main Street modified to appropriately reference the Harris utility plans.

The scope of work and level of effort presented herein explicitly excludes any construction administration assistance and staking including the preparation of as-builts.

- Update and finalize Civil Plans
- Update and finalize construction details
- Update and finalize traffic and signal plans
- Update and finalize lighting plans
- Update and finalize landscaping and irrigation plans
- Update and finalize specs
- Update and finalize estimate
- Perform in-house quality control review

DELIVERABLE: Final plans at 1"=20' scale with specifications, bid documents, estimate. Submission of 100% construction documents will include electronic submissions.

5) TASK 5B: BIDDING PHASE ASSISTANCE

The CONSULTANT during the bid phase will be available to attend required meetings, to review bids and to provide clarifications, addendums and written recommendations.

- Attend Pre-bid meeting
- Provide clarifications and addendum
- Review bids

6) TASK 6: PROJECT MANAGEMENT

The level of effort associated with project management is directly correlated with the duration of the project. The Midtown North Main Street Improvements Project is estimated to be approximately 14 months. Within this period of time bi-weekly project trend meetings will be held. The CONSULTANT will prepare the agendas, run the meetings and distribute meeting minutes.

The CONSULTANT is required to coordinate with CITY staff, public utility owners, Caltrans and the Library Architect, who is designing the library and the Parking Structure Architect who is designing the East and West parking garage structures, as well as all other Federal, State, or Local agencies as required. At this point in time, it is assumed that the CITY will be the contact point for other development projects such as the County Health Center and Senior Housing projects.

The critical path of the project schedule is the Caltrans approval of the Encroachment Permit which is also contingent upon the approval of the State Architect. Per Caltrans' recently issued direction, all improvements within State right of way involving accessibility is required to be submitted to the Department of the State Architect (DSA) for review and approval. Caltrans encroachment applicants are required to independently submit to DSA and obtain evidence of approval prior to Caltrans approval and permit issuance. The CONSULTANT will provide the coordination with the DSA.

The Caltrans coordination will be limited to work related to the processing and approval of an encroachment permit for the work proposed at the intersection of Main Street and Route 237, the EVA and the potential driveways to the West garage facility. The CONSULTANT will make all efforts to obtain a Caltrans encroachment permit for the EVA and driveways but cannot guarantee its approval if Caltrans policy will not permit the proposed access. It is assumed that Caltrans right of way along the Route 237 off-ramp is access controlled right of way. Caltrans right of way documents and additional coordination will be required. The CONSULTANT will provide boundary resolution and right of way mapping and processing through Caltrans as part of Task 11. It is assumed that the CITY roadway segment under the Route 237 overpass does not require Caltrans processing.

The CONSULTANT understands that the CONSULTANT will be required to provide a limited number of presentations, estimated to be two, to the community or the CITY Council. The remaining presentations will be given by CITY staff with the CONSULTANT providing project exhibits to the CITY for use in the presentations.

- Attend & conduct weekly design meetings. Prepare agendas and meeting minutes.
- Attend weekly design meetings
- Attend follow-up meetings with CITY (estimated to be 6)
- Coordinate design with team members, library architect, utility companies, and Caltrans
- Supervise design development
- Provide necessary information and prepare applications for Caltrans encroachment permit
- Update project schedule monthly
- Provide two public presentations

DELIVERABLE: On-going work effort to coordinate all subconsultants and deliverables.

7) TASK 7: REIMBURSIBLES AND REPRODUCTIONS

Submissions requiring reproduction will be provided during Task 2A, 2B, 3, 4 and 5. It is assumed that the CITY will require a maximum of 10 copies of each deliverable. Printing reproductions will be limited to reproductions required as a function of work scope and the fee cited herein.

The cost associated with reimbursable consisting of printing, reproductions, deliveries and media is \$28,000.

Reimbursable expenses shall not include any of the following:

1. Meals, travel, lodging or per diem
2. Internal reproductions
3. Telephone, telecommunications, or network costs
4. Any other item not specifically listed as reimbursable.

8) TASK 8: REIMBURSIBLES FOR E & O INSURANCE PREMIUM

The CONSULTANT's Professional Errors and Omissions Insurance coverage limit is \$3,000,000. There is no CONSULTANT cost associated with this task. In order for the design team subconsultants to increase their insurance coverage limits to \$2,000,000, the additional fee is \$7,800.

9) TASK 9: CITY CONTINGENCY

With advance written approval by CITY, CONSULTANT shall provide additional professional services, which are not to exceed \$125,000.

10) Task 10: CITY OUTLINED EXCLUSIONS

The following items are NOT included in this scope:

1. Government Agency Fees
2. Design of Underground Utility Mains (shown on Utilities plan)
3. Environmental evaluation
4. A detailed traffic report is not included in this Scope of Work (it is assumed that existing data will be utilized to evaluate any proposed improvements)
5. Storm drainage master plan
6. Construction Staking
7. Preparing and filing of maps with the county; i.e. record of survey, parcel map, or tract map, other than street vacation instruments called for in the scope of work.

11) Task 11: Additional Survey and Mapping

In an effort to efficiently provide additional surveying and mapping, the survey notes and traverses used in the development of the existing information will be made available to

the CONSULTANT. Since the CITY provided boundary survey and ALTA were developed by a licensed surveyor in late 2004, the CONSULTANT will use this information for the project design. The CITY will supply updated title reports on parcels affected by the proposed design. The updated title reports will be reviewed by the CONSULTANT to determine if revisions to the right of way have taken place since the right of way surveys were conducted.

After reviewing planimetric and topographic mapping available to the CONSULTANT team, it has been determined there is insufficient mapping coverage west of North Main Street to Abel Street. The project includes proposed streetscape facilities and emergency vehicle accesses (EVAs) along Weller Lane (East of North Main Street) and along the WB SR 237 loop off ramp respectively. For this task, it is known that there is sufficient aerial topographic coverage available from the Abel Street Improvements project and the Milpitas Library project. The two separate topographic maps will be merged together to provide comprehensive base coverage for the Midtown North Main Street Improvement Project. With this being said, it is assumed that a merging of the existing topographic mapping to provide comprehensive coverage will be conducted and included as part of this task to resolve the mapping shortfall.

Supplemental topographic survey is being proposed as part of this task to obtain additional grades along proposed conforms, including along the street right of way. In order to meet the CITY's request to provide contours outside of the street right of way, additional grades will be required. Spot elevations will be obtained as needed to properly perform a flood plain analysis. It is anticipated that above ground delineation survey will be required throughout the project limits to ensure completeness and accuracy of the existing information including proper representation of dimensions of above ground features. The CONSULTANT will also perform topographic survey near the completion of the project to verify existing project features.

In conjunction with the project's desire to obtain access from Route 237, the CONSULTANT will resolve the Caltrans boundary and prepare Caltrans right of way documents for access control breaks along Route 237. Approval of access control breaks will be at the discretion of Caltrans and will require the California Transportation Commission's approval. It is assumed that the development of hard copy, appraisal and right of way record maps will not be required for this process.

At this point, it cannot be determined if additional right of way or construction easements will be required by the proposed project. It is assumed that all proposed work can be performed within the existing CITY right of way limits. Any right of way work except for access control break right of way is explicitly excluded from the project scope of work.

- Check existing control and aerial in the field
- Provide extended aerial limits
- Perform supplemental survey to include grades along ROW & miscellaneous topography including verification near project completion
- Delineate survey information into existing survey base sheets
- Resolve boundary and prepare row documents for access control break processing

EXHIBIT B

(COMPENSATION MANNER AND AMOUNT)

The maximum amount of compensation for basic services to be paid to CONSULTANT under this AGREEMENT, including both payments for professional services and reimbursable expenses, shall not exceed _____ dollars (\$_____).

CONSULTANT shall not exceed the following dollar amounts for each work task:

Task 1 \$ _____

Task 2 \$ _____

Task 3 \$ _____

Task 4 \$ _____

Task 5 \$ _____

Task 6 \$ _____

Task 7 \$ _____

Task 8 \$ _____

Task 9 \$ 20,000 (CITY Contingency)

Additional Mapping
and Survey

\$ _____

Sub-total:

\$ _____

TOTAL:

\$ _____

CITY may shift allocation of budget among tasks as necessary and will do so in writing. CONSULTANT shall, during the term of this AGREEMENT, invoice CITY every month for services performed under this AGREEMENT during the previous month period.

Providing the services covered by the invoice have been completed in accordance with the provisions of this AGREEMENT, CITY shall pay CONSULTANT the amount shown on the invoice within thirty (30) days of receipt of the invoice. Ten (10) percent shall be retained by the CITY from each contract billing until the completion of the contract. This retention shall be released to the CONSULTANT upon completion of each contract work task (as specified in Exhibit A), to the satisfaction of the CITY. Upon completion of each work task, CONSULTANT shall submit a separate letter requesting release of retention for that task.

The monthly invoice shall describe the topics and tasks completed during by CONSULTANT and sub-CONSULTANTS. The invoice shall list the hours expended with personnel charge rates, and reimbursable expenses, in accordance with "Item B -Rate Schedule", incorporated herein. The hourly rates shown on each schedule are fixed for the project. The invoice shall also show the total to be paid for the invoice period. A budget summary shall be included on the front page of the invoice and shall show the total budget amount, total amount billed to date, and the budget balance. A spreadsheet (attached) shall be used to record the monthly invoices and shall be attached to each invoice.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	391-9518165153999	\$150,000	391-951816514800	\$150,000
<input type="checkbox"/> Budget Transfer	395-2940	\$150,000	395-3999	\$150,000

Explain the reason for the budget change:

This project is part of the current five-year Capitol Improvement Program (CIP). The completed project will consist of public street, driveway and streetscape improvements to existing North Main Street from Weller Lane to Carlo Street, Winsor Street, from Carlo to the northern terminus; and Weller Lane east of Abel, and driveways to the proposed Midtown Parking Garages. The streetscape improvements will include all amenities to create a pedestrian-oriented street that support the Midtown streetscape guidelines and the Midtown Specific Plan for the area. This project also includes each intersection at all warranted signalized improvements. The streetscape improvements shall be designed to support existing and new developments. Existing developments include several commercial and retail establishments. New developments include: a 60,000 square-foot library; a 103-unit senior housing project; a 60,000 square foot County Valley Health Center; a 240 to 300-space east parking garage; and a 275 to 400-space west parking garage, with first floor retail.

This budget change request will cover the costs for roadway design services of a pre-qualified consultant to be selected under a Request for Proposal (RFP).

Approve an appropriation of \$150,000 from the 2003 RDA TABs CIP Fund into the Main Street Midtown Improvements CIP 8165 to cover the costs for roadway design services.

☒ Check if City Council Approval required.

Meeting Date: April 5, 2005

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date:	2/22/05
Reviewed by:	Finance Director:	Date:	3/18/05
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	